

IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

FIRST APPEAL NO. 253 OF 2006

Ezlinda Fernandes, resident of
H.No. 125, Goltim, Divar.

.... Appellant

Versus

1. Shri Patrociano Cabral, son of
Late Antonio Cabral, major, married,
Residing at Porbowado, Piedade,
Ilhas-Goa.

2. Vinci Cabral, son of Patrociano
Cabral, major, bachelor, residing
At Porbowado, Piedade,
Ilhas-Goa.

3. State of Goa, represented by Head
of Demolition Squad, office of the
Chief Estate officer, and Head of
Demolition Squad, Govt. of Goa,
Junta House (Annexe), 6th floor,
Panaji-Goa.

4. State of Goa, represented by
Chief Secretary, Govt. of Goa,
Secretariat, Panaji-Goa.

.... Respondents

Shri T. George John, Advocate for the Appellant.

Shri J. Godinho, Advocate for Respondent no.1.

Shri Anthony D'Silva, Advocate for Respondent no.2.

CORAM : **P. V. KAKADE, J.**

DATE : **17th October, 2006**

ORAL JUDGMENT:

Heard learned Counsel for both the parties. Rule. Rule made returnable forthwith.

2. The plaintiff has filed suit for permanent injunction with the case that defendant no.1 had addressed a letter dated 23/04/1997 to plaintiff no.2 threatening to demolish the boundary wall which was repaired by plaintiff. Plaintiff has denied doing of illegal construction and encroaching of public lane. The defendants contested the suit, inter alia, denying the allegations and with submission that the act of plaintiff is causing hardship to the public and sought dismissal of the suit.

3. On the basis of available evidence and pleadings of both the parties, the learned trial Judge settled as many as nine issues for consideration. However, apart from merits, the judgment appears to be a classic example as to how judgments should not be written. The issues are dealt with practically in one page contents without giving any reasoning, or without showing any application of mind of the Judge and, therefore, it is not known as to what weighed on the mind of the learned Judge while

decreeing the suit.

4. Be that as it may, without any further comments, I hold that it is a fit case to remand the matter to the trial Court for adjudication afresh, after giving opportunity to both the sides to lead evidence and, thereafter, to write judgment showing application of mind of the trial Judge.

5. Hence, the matter is remanded to the trial Judge, with direction to hear afresh after giving opportunity to both the sides to lead evidence and to adjudicate the dispute in proper manner adhering to the principles of law relevant for the purpose. With these directions, the appeal stands disposed of with no order as to costs. The order of the trial Court is set aside and matter is remanded for retrial in view of the observations made herein.

P. V. KAKADE, J.

NH